Monitor

Making the health sector work for patients

Consultation on the 2014/15 National Tariff Payment System

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1 Introduction

The Health and Social Care Act 2012 (the 2012 Act) required Monitor to consult formally on the proposals for the 2014/15 national tariff.

The statutory consultation process allowed clinical commission groups (CCGs) and 'relevant providers' (i.e. each NHS foundation trust and any other provider of NHS services in England for which there is a national price) to challenge the proposed method for determining national prices.

Had a sufficient volume of either CCGs or relevant providers objected, we would have needed to modify the proposals and re-consult, or make a reference to the Competition Commission requiring it to make a determination on our proposed method for determining national prices. The consultation period ended on 4 November 2013, and we did not receive a sufficient volume of objections to require us to take either of these courses of action. Consequently, we are now publishing the final national tariff.

As part of the consultation process, NHS England and Monitor also considered responses from CCGs, relevant providers and other stakeholders about the proposals published in the consultation notice, before making a final decision to publish the national tariff.

This document gives details of how the consultation process for the *2014/15 National Tariff Payment System* worked and gives our responses to the key issues raised.

This document is structured as follows:

- **Section 2** sets out the context in which the statutory consultation on the *2014/15 National Tariff Payment System* has taken place;
- **Section 3** summarises the activities undertaken for the consultation process;
- **Section 4** summarises the quantitative results from our statutory consultation; and
- **Section 5** contains the responses from Monitor and NHS England to the key issues raised by stakeholders in the consultation process, including, where relevant, a summary of how our response has been implemented in the *2014/15 National Tariff Payment System* and associated supporting guidance.

2 Context

NHS England and Monitor have taken on responsibility for the NHS payment system from the Department of Health under the provisions of the 2012 Act.

The 2012 Act requires us to publish proposals for the national tariff and consult on these before its final publication; we must also publish an impact assessment for those proposals. In addition, the 2012 Act makes provision for CCGs and relevant providers to challenge the proposed method of for determining national prices in the national tariff. If the proportion of CCGs or relevant providers objecting to this method is equal to, or greater than, one of several prescribed thresholds, then Monitor must either review the proposed method and re-consult or refer the original proposed method to the Competition Commission for a determination.

The details of the process by which CCGs and relevant providers were able to object were set out in Annex 5B to the consultation notice published on 3 October 2013 (this included a full description of the term 'relevant provider').

The formal consultation period (which ended on 4 November 2013) marked the end of a wider engagement that NHS England and Monitor had jointly conducted with the sector since early 2013. In particular:

- On 13 May 2013, Monitor and NHS England jointly published a discussion paper: *How can the NHS payment system do more for patients – a discussion paper.*
- On 13 June 2013, Monitor and NHS England jointly published *The National Tariff 2014/15: An Engagement Document* (referred to also as the Tariff Engagement Document or 'TED'). This set out our preliminary proposals for the 2014/15 national tariff.
- Following publication of the TED, we held a series of four regional workshops and webinars in June and July 2013 to engage with the sector on the key proposals set out in the above two publications.

The responses were used to inform the final proposals in the consultation notice.

3 The statutory consultation process

This section describes the activities undertaken jointly by NHS England and Monitor as part of, or alongside, the statutory consultation process.

The consultation process included:

- researching and compiling a contact list of organisations to be sent a formal notice of our proposals for the 2014/15 national tariff, and mailings/outreach activities directed to those organisations;
- publication of the formal consultation notice and supporting guidance on 3 October 2013 along with a statutory questionnaire and survey on the guidance; and
- in addition, we held four regional workshops to engage providers and commissioners on the published draft guidance on locally determined prices.

These activities are described in more detail below.

3.1 Mailings/outreach

The 2012 Act (section 118) requires that before publishing the national tariff Monitor must send a notice containing the proposals to:

- each CCG;
- each relevant provider (i.e. each NHS foundation trust and any other provider of NHS services in England for which there is a national price); and
- such other persons as it considers appropriate.

This provision of the 2012 Act in effect required us to identify the full set of CCGs and relevant providers, since no single authoritative list already existed. To identify these organisations, Monitor and NHS England drew upon internal information as well as information from:

- the NHS Trust Development Authority (in respect of NHS trusts);
- a commercial organisation (in respect of relevant independent providers);
- the Cabinet Office (in respect of Community Interest Companies); and

- the Department of Health. This step was useful to cross-check the data, as in previous years the Payment by Results team had liaised with providers on the national tariff.

Once a set of recipients had been identified, an email or letter was sent in August 2013 to all groups to identify the name of the most appropriate individual representative within an organisation to send the consultation notice to. Also, in the case of identified relevant providers, we requested financial information to calculate their share of supply for NHS services in England for which there is a national price.

During September 2013, Monitor refined the set of recipients through follow-up communications.

3.2 Publication of the statutory consultation notice

Monitor published the *2014/15 National Tariff Payment System: A Consultation Notice* on 3 October 2013, in accordance with section 118 of the 2012 Act, together with a range of supporting documentation and guidance. The supporting documents included an impact assessment of the proposals, published on 7 October, in accordance with section 69 of the 2012 Act.

The consultation notice was sent to 367 individual CCGs and relevant providers with an email link to:

- the consultation notice on Monitor's public website;
- FAQs on the consultation process itself;
- a questionnaire on the proposed method for calculation of national prices for the 2014/15 national tariff. This asked CCGs and relevant providers to state whether they objected to the proposed method for the calculation of national prices and (if applicable) which element; and
- an additional survey on the draft guidance published alongside the notice. This asked for feedback on the draft guidance on constructive engagement, templates for use in working with locally determined prices, scenarios for the application of locally determined prices and specific questions on mental health.

A similar email was sent to another 373 stakeholders, including providers of services not covered by national prices, as well as professional clinical associations and health-policy think tanks.

Recipients were asked to submit their responses to the proposals by 4 November 2013.

Following publication of the consultation notice, we reminded non-respondents with emails on 24, 28 and 31 October 2013.

Throughout the consultation period, Monitor used its twitter feed to alert about 6,000 followers on the consultation process.

3.3 Regional workshops on locally determined prices

During the consultation period, four full-day workshops were held in London, Leeds, Birmingham and Manchester. These focused on the draft guidance that Monitor had published on proposals for locally determined prices (that is, local modifications, local variations and local price setting). The workshops were primarily aimed at operational managers from providers and commissioners, but attracted participants from a range of backgrounds. Staff from both Monitor and NHS England facilitated discussions.

The workshops were attended by a total of 175 attendees, made up of 63 providers, 106 commissioners and 6 other organisations.

Afterwards attendees were asked to complete a short questionnaire and 58% did so.

The purpose of the questionnaire was to assess how well workshops improved stakeholder understanding of proposed guidance as well as the extent to which attendees felt they had an opportunity to contribute and felt listened to. NHS England and Monitor had agreed a number of 'success measures' metrics in advance.

The success measures and responses to the evaluation are set out in Tables 3-1 and 3-2 below.

Table 3-1: Success measures

Success Criteria	Target %	Result %
Stakeholders engaged in the workshops had an opportunity to have their say and feel listened to.	66	100 (agree) 0 (disagree)
Stakeholder understanding of proposed arrangements for locally determined prices	66	See Table 3-2

Table 3-2: Responses to the locally determined prices workshop evaluation survey

	Before the workshop %		After the workshop %	
	Very high/ fairly high	**Very low/ fairly low**	**Very high/ fairly high**	**Very low/ fairly low**
Overall understanding of locally determined prices	40	60	98	2
Understanding of the definition between local variations, local modifications and local price setting	24	76	97	3
Understanding of the key principles underlining the use of local variations, local modification and local price setting	23	77	98	2
Process, practical steps and timing for local variations	19	81	88	12
Process, practical steps and timing for local modifications	13	87	83	17
Process, practical steps and timing for local price setting	32	68	90	10

As shown by the tables above, both success measures for the regional workshops were met, and the workshops improved delegates' understanding of locally determined prices. The workshops also provided feedback that we used to refine the guidance documents.

4 Summary of quantitative results from the statutory consultation

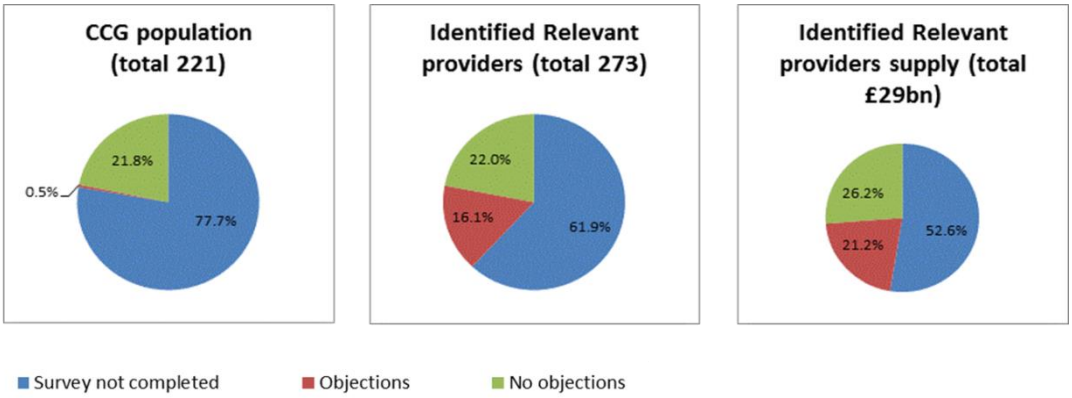
In this section, we summarise the quantitative results from the statutory consultation. By asking stakeholders to respond using an online form, we were able to assess the quantitative feedback and collate written feedback more quickly.

CCGs and relevant providers were invited to respond (via the online form) and state whether they objected to the proposed method for calculation of national prices. Where they did, they were asked to indicate which of the following four elements they objected to:

- the 'rollover' approach to calculating national prices;
- cost uplift factors;
- efficiency factor; and/or
- prices for new/amended currencies.

Figure 4-1 below sets out the overall responses to this element of the statutory consultation.

Figure 4-1: Survey of objections to the method



As Figure 4-1 shows, circa 22% of CCGs and 38% of relevant providers responded to the formal consultation.

One CCG objected to the proposed method for determining national prices. This represents 0.5% of all CCGs.

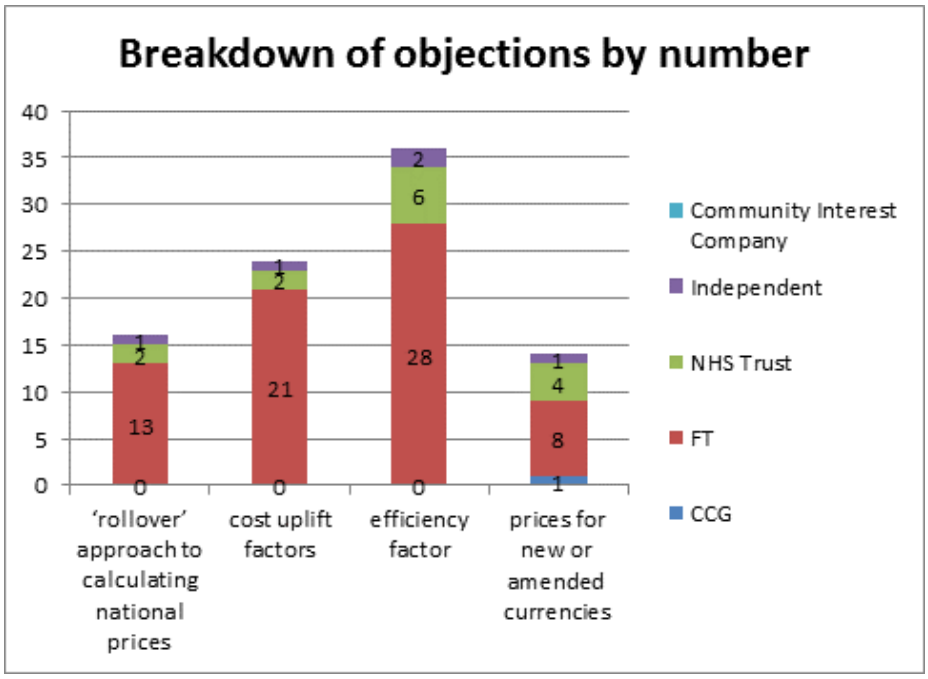
A total of 44 relevant providers objected to the proposed method for determining national prices. This represents:

- 16.1% of all identified relevant providers (measured by number); and
- 21.2% of all identified relevant providers (measured by share of supply).

The 2012 Act and subsequent regulations provide that Monitor cannot publish the final 2014/15 national tariff (without re-consultation or referring to the Competition Commission) if objections to the proposed method for the calculation are above set thresholds. These thresholds are 51% or more of the total number of CGCs, 51% or more of the total number of relevant providers or 51% or more of relevant providers, weighted by share of supply (as calculated in accordance with the regulations[1]). The results of the statutory consultation show that the percentage of objections was below this threshold on all three counts.

Figure 4-2 below provides a breakdown of objections and shows the efficiency factor was the most contentious aspect of the proposals.

Figure 4-2: Breakdown of objections



[1] See regulations 5 and 6 of the National Health Service (Licensing and Pricing) Regulations (S.I. 2013/2214) which can be found at http://www.legislation.gov.uk/uksi/2013/2214/contents/made

5 Response to consultation feedback

As part of the formal consultation process, Monitor and NHS England have jointly considered responses from stakeholders both in response to the consultation notice and from the regional workshops on locally determined prices.

As described in the *2014/15 National Tariff Payment System,* the prices, methods, rules and policies in the 2014/15 national tariff are substantially similar to those of the consultation notice. It would, of course, be inappropriate for Monitor to publish a final national tariff that is substantially different to that consulted on. However, we have taken note of the comments, and for each of the key issues raised in responses to the consultation, we have typically responded in one of the following ways:

- we have amended the text for the sake of clarity;
- we have addressed the question raised as part of a series of FAQs to be published on Monitor's website; and/or
- we have summarised our response in this document (see below), in cases where we consider a further explanation would be helpful.

In the remainder of this document, we set out the key issues and our responses, split into the following groups:

- method for determining national prices generally (incorporating comments on the cost uplift, efficiency and 'rollover' elements);
- method for determining national prices (new or amended currencies);
- national variations;
- locally determined prices (generally);
- local modifications;
- local variations; and
- other comments.

Inevitably, we have not been able to itemise each comment we have received, but our intention is to reflect the main points raised.

Method for determining national prices

Topic: Method for determining national prices		
Theme	**Feedback**	**Our response**
Cost uplift factors	• The general inflation cost uplift factor does not fully reflect increase in energy and transport costs.	• We considered this issue for the consultation notice, having received a similar comment during our stakeholder engagement process. For 2014/15, we have continued the DH's method of using the forecast of the GDP deflator estimated by the OBR. We are satisfied this is a reasonable proxy for general operating costs (i.e. non-pay, non-drugs) faced by providers. We may in future further refine our general inflation approach, where we can identify clear evidence. We note that the cost uplift applied for the national tariff is significantly more tailored than is the case in most other regulated industries.
	• The general inflation capex factor does not fully reflect replacement costs of donated assets and fully depreciated assets purchased prior to commencement of the tariff. • The general inflation capex factor does not fully reflect the requirement to self-fund replacement IT systems. • In addition, all providers are reimbursed for PFI including those without PFI schemes.	• This is a very complex area of costing, and we are reluctant to make adjustments to the treatment of capital costs without a comprehensive review. • Reform of capital costs, including data and analysis of providers' assets, is likely to be a long-term project.
	• There are a number of limitations of an average cost pricing method, e.g. it does not recognise the higher costs in specialist hospitals, additional labour costs for independent sector providers or the costs of pension auto enrolment.	• We recognise these concerns, and they could be considered as part of future reform options. For 2014/15, we do not have a compelling case to change prices. In setting prices, we will need to balance the need for prices to reflect efficient costs and the need for the pricing system to be as simple and as transparent as possible. For 2014/15, our approach necessarily involves applying a cost uplift figure that is an estimate of the average level of cost increases, and is not tailored to individual providers. • There are top-up payments available which are designed to recognise the additional costs of specialised activity compared to non-specialised activity within the same Healthcare Resource Group (HRG).

Efficiency factor	• A 4% efficiency target is not sustainable in the longer term. For some the target is already unsustainable in 2013/14, in particular considering the delivery of high efficiency targets in the past few years.	• We acknowledge that 4% is a stretching requirement. On the basis of the available evidence we consider that 4% is sustainable this year.
	• The allocation of the efficiency potential to providers is flawed. • The Foundation Trust planned efficiency is circular as an efficiency target has been communicated by Monitor. • Double counting of efficiency targets with other mechanisms operating in parallel to the efficiency factor.	• The available evidence supports 4%, in the context of setting the efficiency requirement this year at the highest level that it is reasonable to expect providers to deliver. • The Foundation Trust plans are forward-looking, and we took the plans as evidence that providers are taking active steps to improve their efficiency. Further, we did not rely on these data points in isolation but, for example, also looked at what Foundation Trusts have reported as achieved efficiency gains. • We accept that efficiency requirements in national prices must be consistent with other regulatory measures, and we are content this is the case for 2014/15. We will continue to evaluate the efficiency factor in the context of other regulatory measures, and vice versa.
Rollover approach	• Prices for 2014/15 will be based on data which is four years old and inaccurate and does not reflect clinical developments or changes in guidelines for staffing models.	• We noted in the consultation notice that a rollover method would implicitly use four-year-old reference costs, which may not fully reflect current practice or case mix. However, given the extensive changes the NHS is going through and the new statutory processes, on balance we decided that a rollover approach for national prices is the most appropriate approach for the *2014/15 National Tariff Payment System* (particularly in light of stakeholders' concerns about volatility).

Method for determining national prices (new or amended currencies)

Topic: Method for determining national prices (new or amended currencies)		
Theme	**Theme**	**Theme**
BPTs	• Some CCGs consider that BPTs create perverse incentives e.g. stimulate inappropriate admissions and reward intent rather than outcomes. • Some providers consider that the administrative burden to prove outcome for payment is too onerous.	• Keeping administrative burden to a minimum has been a key consideration in BPT development and changes have only been made where evidence suggests the costs of implementation could outweigh the benefits. As an example, the cataracts best practice tariff was made non-mandatory in 2013/14.
	• Qualification thresholds (e.g. for the new hip and knee replacement BPT) are too wide - these should be more demanding.	• With the new hip and knee replacement BPT, we have deliberately taken a cautious approach for 2014/15, given that this is the first year for which we are explicitly linking an element of payment to outcomes. We would welcome feedback on its implementation.
	• Greater clarity is needed in the circumstances for application of BPTs.	• We have tried to ensure that the documentation produced in support of the national tariff is as clear and comprehensive as it can be, particularly in relation to the implementation of best practice tariffs. We plan to address specific issues raised on the BPTs through future *Frequently Asked Questions*.
Changes to specific services	• Mandatory and non-mandatory prices for some services considered too low: PET/CT scans, audiology services, diagnostic tests in community settings, laparoscopic nephrectomy and complex bronchoscopy.	• Prices are based on the best cost evidence available. Where relevant we checked the proposed prices with relevant clinical experts prior to the consultation. • We recognise that any change to HRG design will have an impact on patterns of income and expenditure. Our impact assessment showed that no providers would be unduly affected, in aggregate, by the specific changes proposed. It is also worth noting that the small number of changes being made for 2014/15 were designed primarily to ensure that the tariff remains clinically relevant.

National variations

Topic: National variations		
Theme	**Feedback**	**Our response**
Marginal rate rule	• The activity baseline of 2008/09 should have been updated. Since this change has not been made, Monitor and NHS England must ensure local baselines are agreed pragmatically e.g. appropriate, proportionate and set to drive best clinical behaviours / correct patient flows. • There should be more information on how commissioners will be held to account for their use of 70% funds and transparency of this information.	• Monitor and NHS England conducted a review of the marginal rate rule to inform our 2014/15 proposals. This considered all available evidence and found that due to local variability in how the rule had been applied, and how demand patterns had changed; a single national solution was not optimal. We have created rules and incentives to require local health economies to review and agree appropriate baselines and to ensure retained funds are invested transparently and effectively.
	• More fundamental re-think required on the payment system policy in this area.	• We are reviewing the entire payment system for urgent and emergency care as a priority to support the findings of Sir Bruce Keogh's review of Urgent and Emergency Care.
Specialist Top-ups	• Three providers suggested that the list of eligible providers should be reviewed, and consideration be given to a specialist top-up for cancer services.	• As explained in the consultation notice, for 2014/15 we have placed considerable weight on stability of nationally determined prices. As a result, we have not reviewed the lists of providers that are eligible for specialist top-ups, nor have we been able to gather the necessary evidence to design and test alternative top-ups. • As part of our longer term work on payment design we are looking at reimbursement for complex patients and cancer pathways. This work may impact on the 2015/16 national tariff.

General comments on locally determined prices

Topic: General comments on locally determined prices		
Theme	**Feedback**	**Our response**
More engagement	• Would like more workshops, webinars and other engagement to support the sector when using these new policies. • Would like to see more worked examples, especially examples showing more complexity/different settings.	• We are planning further engagement with the sector on how to apply the rules and method for local variations, modifications and prices, including webinars in relation to the 2014/15 national tariff, and workshops to support our development of the national tariff for 2015/16. We are also planning to publish FAQs on local variations, modifications and prices for 2014/15. • We plan to publish a summary of the local modifications that are approved in 2014/15 which will include relevant examples and advice on the key reasons that local modifications have been rejected. • We plan to publish a summary paper on the type of local variations that are agreed by providers and commissioners for 2014/15, including real examples, to support the sector when using these policies in future.
More clarity	• Consider simpler signposting of responsibilities for providers and commissioners for local variations and modifications.	• We are publishing FAQs to address key issues such as this. We have updated our guidance to be clearer and include the worked examples from the draft scenarios document that we previously published.

	• New fields should be added would help to make the web-based publication tool more user friendly e.g.:
	  • information about the provider (e.g. type; size; city centre/rural);
	  • associated specialty / disease group;
	  • point of delivery; and
	  • how the activity is flagged.
		• We have updated our templates to clearly distinguish mandatory and non-mandatory fields and changed some of the existing fields to make them clearer in response to stakeholder feedback. In general, we have sought to strike a balance between the level of information captured and the burden the tool imposes on users.
		• We will review the design of the templates as we receive local modifications and local variations during 2014/15 and may update them in future, depending on lessons learned from the first year of operation.

Topic: General comments on locally determined prices		
Theme	**Feedback**	**Our response**
	• Monitor and NHS England should state clearly what they will do with the information that is published on local variations.	• The 2012 Act requires that details of all agreed local variations are recorded and published. Monitor and NHS England will use the information published about local variations to inform future development of the pricing system. In addition, increased transparency of locally determined pricing agreements will benefit the sector more broadly.
New information requirements	• More clarity is required on what Monitor will do with the price information that is collected on services with mandatory currencies but not mandatory prices, such as the mental health 'cluster' currencies.	• We do not plan to publish local price information for services without national currencies in 2014/15. We will use this price information to inform our longer-term strategy for pricing and future national tariffs.
Other concerns	• Concerns that local variations will create pressure for other providers to seek the same agreement.	• The 2012 Act requires that local variations must be published and we expect this new transparency to be beneficial to the sector. All local variations must be agreed between a provider and commissioner, which means that providers with different circumstances may not agree the same variations with a commissioner as others.

Local modifications

Topic: Local modifications	
Feedback	**Our Response**
• Monitor and NHS England should review the 4% deficit requirement for local modification applications.	• We will review our method for local modifications based on the lessons learned from the first year of operation of this policy. We will consult the sector on any proposed changes to our method for 2015/16 as a result of our review.
• Further guidance is needed on timing for local modification agreements and applications.	• We may provide guidance on processing times in the future, once lessons have been learnt from the first year of operation of local modifications.
• The local modification process adds an administrative burden and time to agreeing prices.	• Local modifications are required by the 2012 Act. Much of our proposed method simply implements the Act. However, we have sought to be proportionate in the requirements we place on providers and commissioners, relying on existing sources of evidence where possible.
• Local modifications negate the purpose of having national prices.	• Local modifications are intended to be used in specific circumstances only where national prices do not reflect unavoidable, structurally higher costs faced by a provider. Local modifications are calculated by reference to national prices.

Local variations

Topic: Local variations		
Theme	**Feedback**	**Our Response**
	• Monitor should state clearly what it will do with the information collected on local variations.	• This information is required for the purposes of monitoring compliance with the national tariff. The 2012 Act requires that details of all agreed local variations are recorded and published. Monitor will use to the information published about local variations to inform future development of the pricing system. In addition, increased transparency of locally determined pricing agreements will benefit the sector more broadly.

Other comments

Topic: Other comments		
Theme	**Feedback**	**Our Response**
General	• The system does not reward demand management e.g. a trust will lose more money by closing a ward and transferring care to the community than keeping it open. • How will payment operate for integrated care?	• We are currently developing a joint long-term strategy for the design of the payment system. We aim to publish this in the spring of 2014. As a core part of this work, we are looking at how to design incentives that support the proactive and coordinated management of care, closer to patients' homes. • In the meantime, local heath economies are encouraged to use the local payment variations to design new approaches to paying for integrated care.
	• The implementation of new tariffs should only be done when national data flows have been defined and are ready to be implemented to avoid multiple local systems being created.	• We have already identified that robust data, ideally patient level and relating to both cost and quality, is a critical building block for the payment system. Establishing robust data flows may take some time and needs to be implemented in a coordinated way across the system. Proportionality is critical, therefore, where possible we will avoid imposing additional burden in data collection.
	• Would like to see overall plan for engagement across the year to enable planning.	• We intend to set out a timeline for the 2015/16 national tariff early in 2014, making it clear when there will opportunities for stakeholders to give us their views and/or further information.
	• Shift focus to outcomes rather than just activity based.	• We are currently developing a joint long-term strategy for the design of the payment system. We aim to publish this in the spring of 2014. As part of our work we will look at how to design incentives that are oriented much more closely around quality for patients - including outcomes and experiences.
	• Information requested on plans to improve cost data (e.g. PLICS).	• The availability of robust and timely cost data will be a key priority for Monitor and NHS England. • In 2013 Monitor carried out a pilot of PLICS collection with 66 trusts. Monitor is currently assessing the usability of this data, feeding back the results to participants of the trial to enable benchmarking. Monitor is currently planning the 13/14 PLICS collection.

Topic: Other comments		
Theme	**Feedback**	**Our Response**
Community services	• Information requested on the long term strategy for community services.	• We are currently developing a joint long-term strategy for the design of the payment system. We aim to publish this in the spring of 2014. This will include our early proposals for redesigning payment for community services, taking into account that many of these services are critical to supporting integrated out of hospital care for vulnerable and/or elderly populations.
Mental health	• Greater clarity required on the future of mental health payment policy at a national level	• We are currently developing a joint long-term strategy for the design of the payment system. We aim to publish this in the spring of 2014. This will include our early proposals for redesigning payment for mental health services, taking into account that many of these services are critical to supporting integrated physical and psych-social care for vulnerable and/or elderly populations.
Maternity	• Unpublished tariffs: no prices provided for critical care benchmark tariffs or maternity (NZ tariff	• We published non-mandatory maternity prices in October as part of the 2014/15 National Tariff consultation. They were contained in the 'tariff information workbook' supporting document. We did not publish benchmark cost data for critical care, though this remains available in the Department's 2013/14 PbR Guidance. In addition, critical care cost data can be found in the 2012/13 Reference Costs publication[2].

[2] Published on 21 November 2013 at https://www.gov.uk/government/publications/nhs-reference-costs-2012-to-2013

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